

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 52

Introduced by Assembly Member Gatto

December 21, 2012

An act ~~relating to Native Americans~~; *to amend Section 21083 of the Public Resources Code, relating to Native Americans.*

LEGISLATIVE COUNSEL'S DIGEST

AB 52, as amended, Gatto. ~~Native Americans~~; *Americans: California Environmental Quality Act.*

Existing law, the Native American Historic Resource Protection Act, establishes a misdemeanor for unlawfully and maliciously excavating upon, removing, destroying, injuring, or defacing a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources.

~~This bill would declare the intent of the Legislature to enact legislation promoting the preservation of Native American sites and requiring developers to consult with appropriate entities to determine possible impacts on Native American sacred sites prior to project initiation.~~

The California Environmental Quality Act, referred to as CEQA, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial

evidence that the project, as revised, would have a significant effect on the environment. CEQA requires the lead agency to provide a responsible agency with specified notice and opportunities to comment on a proposed project. CEQA requires the Office of Planning and Research, referred to as OPR, to prepare and the Secretary of the Natural Resources Agency to certify and adopt, guidelines for the implementation of CEQA that include, among other things, criteria for public agencies to following in determining whether or not a proposed project may have a significant effect on the environment.

The bill would require OPR to revise the criteria for determining whether a proposed project has a significant effect on the environment to include effects on Native American cultural resources, sacred sites, or tribal reservation or rancheria community. By requiring the lead agency to consider these effects relative to Native Americans, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
 State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21083 of the Public Resources Code is
- 2 amended to read:
- 3 21083. (a) The Office of Planning and Research shall prepare
- 4 and develop proposed guidelines for the implementation of this
- 5 division by public agencies. The guidelines shall include objectives
- 6 and criteria for the orderly evaluation of projects and the
- 7 preparation of environmental impact reports and negative
- 8 declarations in a manner consistent with this division.
- 9 (b) The guidelines shall specifically include criteria for public
- 10 agencies to follow in determining whether or not a proposed project
- 11 may have a “significant effect on the environment.” The criteria
- 12 shall require a finding that a project may have a “significant effect
- 13 on the environment” if one or more of the following conditions
- 14 exist:

1 (1) A proposed project has the potential to degrade the quality
2 of the environment, curtail the range of the environment, or to
3 achieve short-term, to the disadvantage of long-term, environmental
4 goals.

5 (2) The possible effects of a project are individually limited but
6 cumulatively considerable. As used in this paragraph,
7 “cumulatively considerable” means that the incremental effects of
8 an individual project are considerable when viewed in connection
9 with the effects of past projects, the effects of other current projects,
10 and the effects of probable future projects.

11 (3) The environmental effects of a project will cause substantial
12 adverse effects on human beings, either directly or indirectly.

13 (4) *A proposed project may have a significant effect on a Native*
14 *American cultural resource or sacred place, or a tribal reservation*
15 *or rancheria community.*

16 (c) The guidelines shall include procedures for determining the
17 lead agency pursuant to Section 21165.

18 (d) The guidelines shall include criteria for public agencies to
19 use in determining when a proposed project is of sufficient
20 statewide, regional, or areawide environmental significance that
21 a draft environmental impact report, a proposed negative
22 declaration, or a proposed mitigated negative declaration shall be
23 submitted to appropriate state agencies, through the State
24 Clearinghouse, for review and comment prior to completion of the
25 environmental impact report, negative declaration, or mitigated
26 negative declaration.

27 (e) The Office of Planning and Research shall develop and
28 prepare the proposed guidelines as soon as possible and shall
29 transmit them immediately to the Secretary of the *Natural*
30 *Resources Agency*. The Secretary of the *Natural Resources Agency*
31 shall certify and adopt the guidelines pursuant to Chapter 3.5
32 (commencing with Section 11340) of Part 1 of Division 3 of Title
33 2 of the Government Code, which shall become effective upon the
34 filing ~~thereof~~ *of the adopted guidelines*. However, the guidelines
35 shall not be adopted without compliance with Sections 11346.4,
36 11346.5, and 11346.8 of the Government Code.

37 (f) The Office of Planning and Research shall, at least once
38 every two years, review the guidelines adopted pursuant to this
39 section and shall recommend proposed changes or amendments
40 to the Secretary of the *Natural Resources Agency*. The Secretary

1 of the *Natural Resources Agency* shall certify and adopt guidelines,
 2 and any amendments ~~thereto~~ *to the guidelines*, at least once every
 3 two years, pursuant to Chapter 3.5 (commencing with Section
 4 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
 5 which shall become effective upon the filing ~~thereof~~ *of the adopted*
 6 *guidelines and any amendments to the guidelines*. However,
 7 guidelines may not be adopted or amended without compliance
 8 with Sections 11346.4, 11346.5, and 11346.8 of the Government
 9 Code.

10 *SEC. 2. No reimbursement is required by this act pursuant to*
 11 *Section 6 of Article XIII B of the California Constitution because*
 12 *a local agency or school district has the authority to levy service*
 13 *charges, fees, or assessments sufficient to pay for the program or*
 14 *level of service mandated by this act, within the meaning of Section*
 15 *17556 of the Government Code.*

16 ~~SECTION 1. It is the intent of the Legislature to enact~~
 17 ~~legislation that would promote the preservation of Native American~~
 18 ~~sites and to require developers to consult with appropriate entities~~
 19 ~~to determine possible impacts on Native American sacred sites~~
 20 ~~prior to project initiation.~~